

<sup>2</sup> The Board notes that appellant, through counsel, specifically appealed OWCP's March 30, 2018 merit decision. Although OWCP's May 4, 2018 merit decision which terminated appellant's compensation benefits, effective May 5, 2018, and June 19, 2018 merit decision which granted him a schedule award for an additional 4 percent permanent impairment of the left lower extremity, totaling 13 percent permanent impairment, are within the Board's jurisdiction, appellant has not appealed those decisions. Therefore, the Board will not address those decisions in this appeal. *See* 20 C.F.R. § 501.3(a)(c).

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability commencing April 25, 2016, causally related to his accepted September 29, 2011 employment injury.

### **FACTUAL HISTORY**

On September 29, 2011 appellant, then a 51-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day he experienced left knee pain while descending stairs at a customer's residence. He stopped work on September 30, 2011. On March 1, 2012 Dr. Mark A. Schottenfeld, a Board-certified orthopedic surgeon, performed an arthroscopic left medial meniscectomy and evacuation of loose bodies and diagnosed complex tear left medial meniscus, multiple loose bodies. By decision dated February 6, 2013, OWCP accepted appellant's claim for aggravation of a tear of the medial meniscus of the left knee.

On February 7, 2013 the employing establishment informed OWCP that appellant had returned to full-time, full-duty work on March 26, 2012.

On May 2, 2016 appellant filed a notice of recurrence (Form CA-2a) alleging that he sustained a recurrence of total disability on April 25, 2016 due to his accepted September 29, 2011 employment injury. He stopped work on April 26, 2016. Appellant alleged that he felt pain in his left knee towards the end of the day on April 25, 2016 and his pain progressively worsened after he returned home. He believed that wear and tear from his job four years after his surgery led to his current condition.

Appellant submitted a November 9, 2015 left knee magnetic resonance imaging (MRI) scan report from Dr. Alan J. Heideman, a Board-certified diagnostic radiologist. Dr. Heideman provided an impression of horizontal tear of the medial meniscus, vertical tear of the anterior horn and lateral meniscus, and grade 4 chondromalacia patella, most severe along the medial facet.

By development letter dated July 1, 2016, OWCP informed appellant that the evidence submitted was insufficient to establish his recurrence claim. It included a questionnaire for his completion and asked that he provide a comprehensive medical evaluation. OWCP afforded appellant 30 days to respond. He did not respond.

OWCP, by decision dated August 5, 2016, denied appellant's claim for a recurrence of disability commencing April 25, 2016. It found that he had not submitted rationalized medical evidence establishing a recurrence of disability due to a material change or spontaneous worsening of his accepted work-related condition. OWCP noted that appellant had not responded to its July 1, 2016 development letter.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

On August 16, 2016 OWCP received appellant's completed development questionnaire. He related that while delivering his route on April 25, 2016 he experienced pain in his left knee which was not unusual. Appellant indicated that by nighttime he could not work due to his pain. He described the work duties he performed on April 25, 2016. Appellant believed that his disability was due to his original injury/illness because his pain was in the same areas. He related that no traumatic injury caused his condition except normal wear and tear since his 2012 surgery. Appellant reported that he had not participated in any hobbies or activities since his original injury/illness that may have affected his accepted work-related condition.

Appellant also submitted a letter dated September 17, 2015 from Dr. Donald E. Heitman, an orthopedic surgeon. Dr. Heitman opined that the accepted September 29, 2011 employment injury contributed to appellant's current medial compartment arthritis, compounded upon mild-to-moderate patellofemoral arthritis, and repeated partial medial meniscectomies to the medial aspect of the left knee.

On September 8, 2016 appellant, through counsel, requested a review of the written record by an OWCP hearing representative regarding the August 5, 2016 recurrence decision.

By decision dated January 10, 2017, an OWCP hearing representative affirmed the August 5, 2016 recurrence decision, finding that the medical evidence of record did not contain a rationalized opinion relating appellant's current disability commencing April 25, 2016 to his September 29, 2011 employment injury.

OWCP subsequently received reports dated January 17 and March 8, 2017 from Dr. Matthew J. Garfinkel, an attending Board-certified orthopedic surgeon. Dr. Garfinkel noted a history of the accepted September 29, 2011 employment injury and appellant's subsequent medical treatment. He discussed findings on physical and diagnostic test results. Dr. Garfinkel provided an impression of pain, other tear of the lateral and medial meniscus, internal derangement and mild degenerative joint disease of the left knee. He maintained that these left knee conditions were directly related to the September 29, 2011 work injury. Dr. Garfinkel listed appellant's physical restrictions and indicated that he could only perform desk work. In an operative report dated April 17, 2017, he indicated that he performed left knee arthroscopy with partial medial and partial lateral meniscectomies, chondroplasty medial femoral condyle, partial medial and partial lateral synovectomies, and removal of one-centimeter-sized chondral loose body.<sup>4</sup> On May 18, 2017 Dr. Garfinkel ordered physical therapy three times a week, for four weeks and reiterated his diagnosis of left knee internal derangement. In a work note dated May 23, 2017, he indicated that appellant could perform modified duties, effective June 20, 2017.

Daily notes dated May 18 to June 9, 2017 from appellant's physical therapists were received.

In additional reports dated April 25, May 23, and June 20, 2017, Dr. Garfinkel restated his left knee impressions of pain, other tear of the lateral and medial meniscus, internal derangement,

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<sup>4</sup> On March 23, 2017 OWCP authorized appellant's April 17, 2017 left knee arthroscopic surgery. Appellant retired from the employing establishment, effective June 30, 2017. By decision dated September 20, 2017, OWCP accepted that he sustained a recurrence of disability, effective April 17, 2017, causally related to his accepted September 29, 2011 employment injury.

and mild degenerative joint disease. He also provided an impression of chondromalacia patellae, chondromalacia, and loose body of the left knee and other synovitis and tenosynovitis, left lower leg. Dr. Garfinkel opined that these left knee conditions were directly related to the September 29, 2011 work injury. In a work note dated June 20, 2017, he indicated that appellant could perform modified duties, effective July 18, 2017. In a later work note dated August 15, 2017, Dr. Garfinkel indicated that appellant could return to full-duty work as of that date. In a February 4, 2017 left knee MRI scan report, he provided an impression of chronic partial acromioclavicular tear and laxity without change and slightly increased attenuation and medial bowing of the medial collateral ligament.

An additional note dated June 13, 2017 was received from appellant's physical therapist.

On January 10 and 12, 2018 appellant, through counsel, requested reconsideration of OWCP's hearing representative's January 10, 2017 recurrence decision.

An additional report dated August 15, 2017 was received from Dr. Garfinkel who reiterated his left knee and left lower leg impressions and opinion on causal relationship.

By decision dated March 30, 2018, OWCP denied modification of the January 10, 2017 recurrence decision, finding that the evidence of record did not provide a rationalized medical opinion sufficient to establish that appellant's claimed recurrence of total disability as of April 25, 2016 causally related to his accepted September 29, 2011 employment injury.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment. This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>5</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>6</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative

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<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing April 25, 2016, causally related to his accepted September 29, 2011 employment injury.

OWCP accepted appellant's original claim for aggravation of left knee medial meniscus tear. Appellant underwent an arthroscopic left medial meniscectomy and evacuation of loose bodies on March 1, 2012. He returned to full-time, full-duty work on March 26, 2012. Appellant stopped work on April 26, 2016 and claimed a recurrence of total disability commencing April 25, 2016 due to the accepted September 29, 2011 employment injury.

Appellant submitted a series of reports from his physician, Dr. Garfinkel. In reports dated January 17 to August 15, 2017, Dr. Garfinkel noted a history of the September 29, 2011 work injury and diagnosed several left knee conditions, including pain, other tear of the lateral and medial meniscus, internal derangement, mild degenerative joint disease, chondromalacia patellae, chondromalacia, and loose body. He also diagnosed other synovitis and tenosynovitis of the left lower leg. Dr. Garfinkel opined that the diagnosed conditions were directly related to the September 29, 2011 employment injury. He initially found that appellant could perform sedentary modified duties and subsequently determined that appellant could perform full-duty work as of August 15, 2017. The Board finds that, while Dr. Garfinkel's opinion is generally supportive of causal relationship, he did not provide adequate medical rationale explaining the basis of his opinion. Dr. Garfinkel failed to offer a rationalized medical explanation as to how the accepted September 29, 2011 employment injury caused appellant's recurrence of disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how the claimed medical condition/disability was causally related to an employment incident.<sup>9</sup> Therefore, the Board finds that Dr. Garfinkel's reports are insufficient to establish appellant's recurrence claim.<sup>10</sup>

Dr. Heitman's September 17, 2015 report and Dr. Heideman's November 9, 2015 diagnostic test report lack probative value as they predate the time of the claimed April 25, 2016

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<sup>7</sup> See *C.C.*, Docket No. 18-0719 (issued November 9, 2018); see also *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>8</sup> *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

<sup>9</sup> *E.W.*, Docket No. 17-1988 (issued January 29, 2019).

<sup>10</sup> *K.G.*, Docket No. 15-0669 (issued April 8, 2016).

recurrence and do not address the relevant time period.<sup>11</sup> Thus their reports are insufficient to establish the claimed recurrent disability.

The notes dated May 18 to June 13, 2017 from appellant's physical therapists are of no probative value. Physical therapists are not considered physicians as defined under FECA and are not competent to render a medical opinion.<sup>12</sup>

As appellant has not submitted medical evidence sufficient to establish a recurrence of disability commencing April 25, 2016 causally related to his September 29, 2011 work injury, the Board finds that he has not met his burden of proof.<sup>13</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing April 25, 2016, causally related to his accepted September 29, 2011 employment injury.

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<sup>11</sup> C.S., Docket No. 17-1345 (issued May 24, 2018).

<sup>12</sup> See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *L.L.*, Docket No. 17-0908 (issued September 11, 2017).

<sup>13</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board